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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,937	07/14/2003	Jeffery Scott Hawkins	DDC 0547 PUS	6646
22045	7590	12/03/2004	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			HOANG, JOHNNY H	
		ART UNIT		PAPER NUMBER
				3747

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/618,937	HAWKINS, JEFFERY SCOTT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Johnny H. Hoang	3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 September 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

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***Response to amendment***

1. The amendment filed on 09/28/2004 under 37 CFR 1.31 has been considered by examiner but is ineffective to overcome the new reference.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brocard et al (US 6,363,353 B1) in view of Malecki et al (US 5,020,361).

Regarding claim 1, the reference of Brocard et al discloses a method for controlling operating of a vehicle engine following subject matters: an electronic control module (120) (col. 4, lines 41-45) and a throttle control (master lever) by limiting response to throttle actuation determined to be undesirable (col. 1, lines 31-33; and col. 5, lines 22-27), comprising:

sensing when said engine is in overspeed operation (col. 2, lines 24-54; and col. 3, lines 33-36);

responding to said sensing said overspeed operation by inhibiting response to throttle control actuation (above discussions). The reference of Brocard et al does not teach enabling engine braking of said vehicle when said overspeed operation is maintained beyond said responding.

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However, the reference of Malecki et al discloses the step of enabling engine braking of said vehicle when said overspeed operation is maintained beyond said responding (col. 3, line 3 through col. 4, line 11; and col. 5, lines 1-50).

Therefore, it would have been an obvious to one of ordinary skill in the art at the time the invention was made to have modified the system which including the step of enabling engine braking of said vehicle when said overspeed operation is maintained beyond said responding as taught by Malecki et al into the system Brocard et al, in order to perform more details of the engine brake, since more information is combined and can be processed more precisely at a higher technology facility.

Regarding claims 2-11, as discussed in claim 1.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny H. Hoang whose telephone number is (571) 272-4843. The examiner can normally be reached on Monday - Thursday (7:00Am-5:30Pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (571) 272-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JHH  
November 24, 2004

Johnny H. Hoang  
Examiner  
Art Unit 3747



Henry C. Yuen  
Supervisory Patent Examiner  
Group 3700